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Supreme Court of the United States.
Supp. Brief of McCammon & Hayden for Captors.
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OCTOBER TERM, 1899.

THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, TACKLE, APPAREL, &c., THE ATLAS STEAMSHIP COMPANY (LIMITED), CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

No. 167.

Appeal from the District Court of the United States for the Southern District of Georgia.

SUPPLEMENTAL BRIEF FOR THE CAPTORS.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
Of Counsel for Captors.

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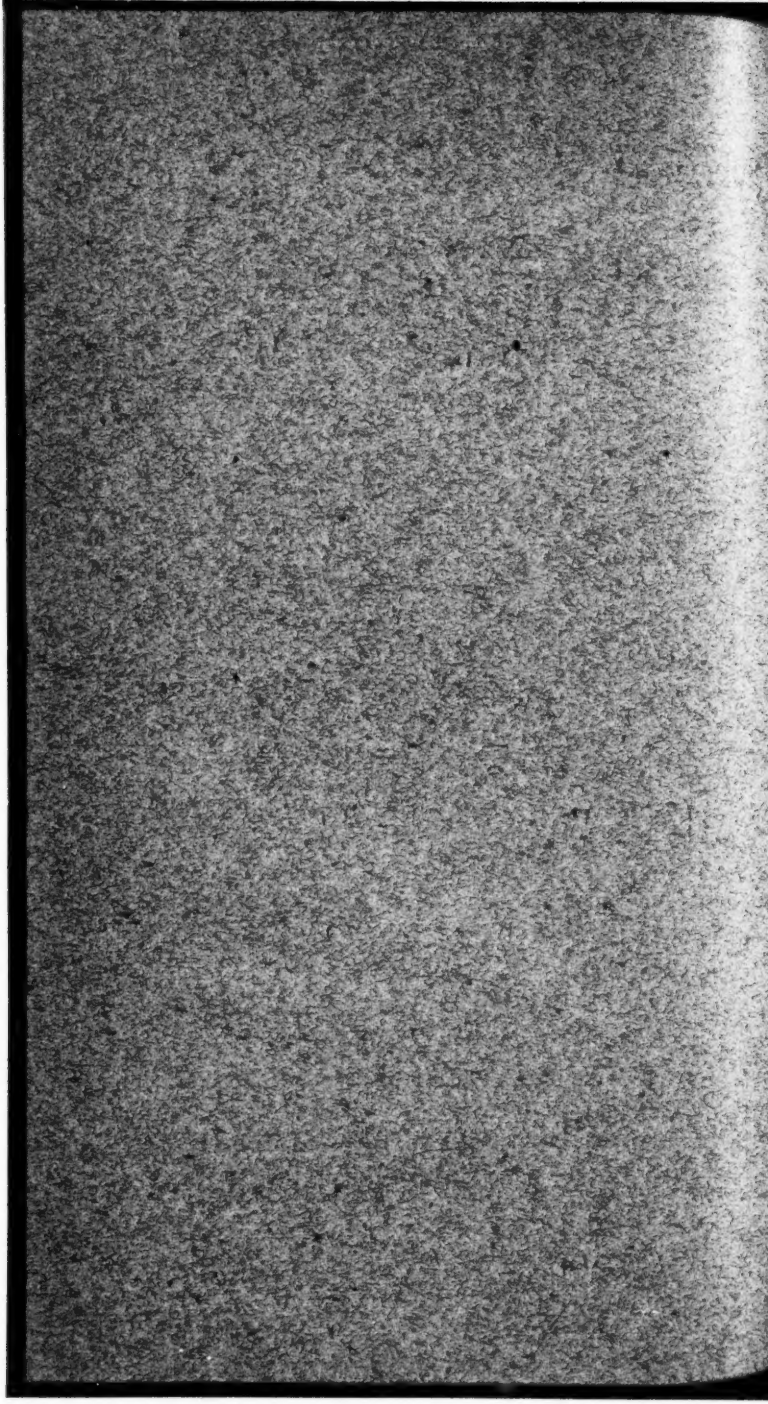

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Since the filing of our briefs in this case we have had more ample opportunity to review the claimant's brief, and consider it desirable to make specific reply to three of the arguments presented.

I.

The appellant contends that no spoliation of the ship's papers can be inferred from the fact, that the passport issued to Solis by the Spanish Consul at Kingston, whereby the latter attempted to authorize the former to take the *Adula* into any Spanish port, was not among the papers

delivered by the prize master to the prize commissioners. It is said (Appellant's Brief, pp. 52–53):

> "Lieut. Anderson's affidavit on this subject is at pages 81 and 82. He annexes a list of 151 documents. The affidavit, however (page 82), admits one error in the list, and contains the statement that, 'if at any time hereafter . . . any further or other papers relative to the said captured property shall be found or discovered to the knowledge of the deponent, they be delivered up.' This would seem to contain a distinct admission that it was possible that another mistake might have been made by some of the United States officers. To admit this is to admit simply that they were human. It cannot be seriously claimed that the mere fact that no such paper was returned by Lieut. Anderson can outweigh the positive testimony of six witnesses that no spoliation of papers occurred."

It will be remembered that on examination *in preparatorio* Solis testified that he had procured such a passport from the Spanish consul and had it with him on board the *Adula*, and that Forwood, the managing owner of the vessel, would not sign the charter-party until the passport had been obtained (p.).

We have contended that the disappearance of the passport was a most suspicious circumstance. It was an enemy license procured for the voyage on which the *Adula* was engaged. Solis or any one else was bound to recognize its incriminating nature.

The prize rules with regard to the taking, preservation and return of all papers found upon a captured vessel are these:

Benedict's Admiralty, pp. 453 *and* 454, *Rules* 8, 9, *and* 10.

8.

The captor shall deliver to the judge at the time of such notice (from the captors to the judge of the prize court), or to the Commissioner or Commissioners, when he or they shall, conformably to the foregoing rule, report the place where such captured property is, or at such other time as said Commissioners or either of them shall require the same, all such papers, passes, sea briefs, charters, bills of lading, dockets, letters, and other documents in writing as shall have been found on board the captured ship or which have any reference to or connection with the captured property, which are in the possession, custody, or power of the captors.

9.

The said papers, documents, and writings shall be regularly marked and numbered by the Commissioner, and the captor, chief officer, or some other person who was present at the taking of the prize and saw that such documents, papers, and writings were found with the prize, must make a deposition before one of the said Commissioners that they have delivered up the same to the Judge or Commissioner as they were found or received, without any fraud, subduction, or embezzlement. If any documents, papers, or writings relative to or in connection with the captured property are missing or wanting, the deponent shall, in his said deposition, account for the same to the best of his knowledge, information, and belief.

10.

The deponent must further swear that if at any time thereafter, and before the final condemnation or

> acquittal of the said property, any further or other papers relating to the said captured property, shall be found or discovered, to the knowledge of the deponent, they shall also be delivered up or information thereof given to the Commissioners or to this Court, which deposition shall be reduced to writing by the Commissioner and shall be transmitted to the Clerk of the Court, as hereinafter mentioned.

An inventory of all papers which had been delivered to him or which he had found on board the *Adula*, was made by Lieut. Anderson, as prize master, and the papers were marked and numbered. The inventory is given in the record (pp. 82–86). On July 25, when he delivered these papers to the prize commissioners, Anderson made his affidavit before them in accordance with the ninth rule. The alleged admission of an error on his part is this:

> "The paper numbered 7 was erroneously named on this list, it being a paper not found on the *Adula*, and is withdrawn."

The description of the paper thus erroneously entered and properly withdrawn is this (inventory, page 83):

> "7. Letter from Capt. Juilen von Ripper, commanding Austro-Hugarian cruiser *Kaiserin and Konigen Maria Theresa*."

The affidavit continued:

> "Affiant further deposes and says that if at any time hereafter and before the final condemnation or acquittal of said property seized, any further or other papers relating to the said captured property shall be found or discovered to the knowledge of the deponent, they shall also be delivered up or information thereof given to the commissioners or to the prize court. Affiant further says that he has de-

livered up to the prize commissioners the said documents, papers, and writings found on the said prize, as they were received by him, without any fraud, subduction, or embezzlement."

Anderson's conduct with respect to the papers, and his deposition before the prize commissioners, were thus a complete and perfect compliance with the prize rules.

It appears that on July 26, 1898, he delivered to the prize commissioners certain other papers which he had found on board the *Adula*. At that time he made a second affidavit (p. 86). The papers were copies of three newspapers which had been published in Kingston on the 9th, 14th, and 25th of June, respectively. These, Anderson said:

> " . . . were upon the steamship *Adula*, together with numerous other newspapers at the time of the seizure of the *Adula* as prize of war in Guantanamo Bay June 29, 1898; that said newspapers were in circulation among the officers of the *Adula;* that affiant did not take possession of said newspapers, however, until after he had delivered the other papers seized to the prize commissioners; that having his attention called to the probable importance of said newspapers by the District Attorney, affiant collected such of said newspapers as were then left on said ship, from the dining saloon and engineer's room of the *Adula*, being informed by the engineer that the other newspapers found on board had been destroyed at quarantine, and affiant now delivers the same to the prize commissioners in the same condition in which the same were found by him."

Here again, we submit, Anderson did his full duty and complied literally with the prize rules. It is not surprising that a prize master should not have attached importance to the newspapers found on board the prize,

nor considered them worthy of classification with the ship's documents or with letters and communications which were being carried upon her. Because these newspapers were not returned to the prize commissioners, it cannot be supposed, or even suggested, that Anderson, who had so carefully and fully performed his duties, would have neglected to return the vessel's passport or license, which would not have been found, like the newspapers, lying around the saloon or engineer's room, but among documents carefully preserved by the master or charterer.

II.

The appellant argues (pages 41, 48–52) that no unfavorable inference can be drawn from the fact that the *Adula* sailed from Kingston for the blockaded port of Cienfuegos without permission from the United States to pass the blockade, or that on that voyage she carried a cargo and discharged it at Cienfuegos. In our brief we have shown that, prior to this voyage, the vessel had formal notice that the blockade had been proclaimed and established, and had respected it by getting passports,—not from a naval officer commanding the blockading fleet,—but from the Government of the United States; and, by being stopped and searched on both of her previous voyages, had learned that the blockade was effective.

Authorities already cited show that by sailing for Cienfuegos, the third time, without permission from the United States, the *Adula* was guilty of a violation of the blockade. Having received due notice of its establishment, she had no right to suppose that it had been raised or discontinued, nor had she any right to suppose that the United States, which had twice been liberal in permitting the ex-

patriation of Cuban refugees, would enlarge its liberality and permit the shipment of cargo to Cienfuegos. It is proven by several members of the captured crew that the cargo carried by the *Adula* on her third voyage was the property of Salcinas, a Spaniard, the real charterer of the vessel, and that he took active charge of its delivery at Cienfuegos.

On this voyage, during which the *Adula* ran the blockade of Cienfuegos, her owner's instructions to her master were the same as those contained in his letter of instructions, directed to Yeates, on June 28 (pp. 32, 12–15). In both the master was warned that he would meet United States vessels and, if stopped by them, should ask permission to pass the blockade, and if such permission were refused endeavor to have that fact endorsed upon the ship's log.

III.

The appellant endeavors to justify the entries made in the *Adula's* log for the 28th and 29th of June. It is contended that the prize court should either have accepted Yeates's testimony as true and wholly consistent with the log entries, or should have ordered him recalled for the purpose of modifying, explaining, and correcting his testimony, so that it would be consistent with the log.

The cases of the *Pizarro*, *Amiable Isabella*, and all other authorities cited, which deal with the ordering of further proofs are consistent in saying that no witness, having testified *in preparatorio*, should thereafter be recalled and permitted to falsify his previous statements.

We have shown that the log entries are on their face erroneous and misleading; also that Yeates's testimony agrees with that given by other officers and members of the

captured crew, all of the testimony being in conflict with the showing of the log.

The deposition of Anderson taken *de bene esse*, pursuant to Sec. 863, R. S. U. S., is referred to simply for convenience. Without it, and without expert knowledge of navigation, the course represented by the log as that pursued by the *Adula* could be graphically reproduced upon a chart of the islands of Jamaica and Cuba.

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